

DISTRICT OF COLUMBIA CRIMES CHART

Prepared by the clerks of the Arlington Immigration Court.

Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?	Other
<p>D.C. Code § 22-1810 (Threatening to kidnap or injure a person or damage his property)</p> <p>Whoever threatens within the District of Columbia to kidnap any person or to injure the person of another or physically damage the property of any person or of another person, in whole or in part, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 20 years, or both.</p>				
Aggravated Felony: Crime of Violence 237(a)(2)(A)(iii)/ 101(a)(43)(F)	Not more than twenty years' imprisonment and \$50,000. See D.C. Code § 22-1810; <i>id.</i> § 22-3571.01(9).	Is § 18.2-193 Categorically an Aggravated felony? NO A conviction under D.C. Code § 22-1810 requires only general intent. <u>See Carrell v. U.S.</u> , 80 A.3d 163, 170 (D.C. 2013) (citing <u>Holt v. U.S.</u> , 565 A.2d 970, 972 (D.C. 1989), to clarify that the statute does not include "any intent element."). The Supreme Court has concluded that for a conviction to constitute a crime of violence, it must include a "higher degree of intent than negligent or merely accidental conduct." <u>Leocal v. Ashcroft</u> , 543 U.S. 1, 9 (2004). Thus, a conviction under this statute does not constitute an aggravated felony crime of violence. Various circuit case confirms this conclusion. <u>See Damaso-Mendoza v. Holder</u> , 653 F.3d 1245, 1248-49 (10th Cir. 2011) (determining a conviction under a Colorado menacing statute was a crime of violence, where the statute required "knowingly" placing or attempting to place another in fear of imminent serious bodily injury); <u>Olmsted v. Holder</u> , 588 F.3d 556, 560 (8th Cir. 2009) (finding that a conviction under a Minnesota terroristic threats statute was a crime of violence <i>because</i> the alien <i>intended</i> to threaten use of physical force against persons) (emphasis added); <u>U.S. v. Tretor-Banuelos</u> , 165 F. App'x 668, 671 (10th Cir. 2006) (concluding that a conviction under the Kansas felony	Is this statute categorically constitute a CIMT? NO The District of Columbia Court of Appeals has held that this statute contains the following elements: 1) the defendant uttered the words to another person; 2) the words were of such a nature as to convey fear of serious bodily harm or injury; and 3) the defendant intended to utter the words which constitute the threat. <u>Carrell v. U.S.</u> , 80 A.3d 163, 171 (D.C. 2013) (citing <u>Campbell v. U.S.</u> , 450 A.2d 428, 431 n.5 (D.C. 1982)). Thus, a conviction under this statute requires only general intent. <i>id.</i> at 170, 171 (noting that one of the requirements is that the defendant <i>intended</i> to utter the words constituting the threat). Offenses that require general intent are generally not CIMTs because they "may be committed without the evil intent, depraved or vicious motive, or corrupt mind associated with moral turpitude." <u>Matter of Solon</u> , 24 I&N Dec. 239, 241 (BIA 2007). Cases that have found threat statutes to be CIMTs have uniformly decided that the threats must be intentional; that is, the intent must be more than to just "utter words." <u>See Matter of Ajami</u> , 22 I&N Dec. 949, 950, 952 (BIA 1999) (holding that the "intentional transmission of threats is	

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criminal threat statute was a crime of violence where the alien was convicted of acting with the intent to terrorize another); Rosales-Rosales v. Ashcroft, 347 F.3d 714, 717 (9th Cir. 2003) (determining that a conviction for the California offense of making terroristic threats was a crime of violence *because* it involved *willfully* threatening to commit a crime, with the specific intent that the statement be taken as a threat) (emphasis added); Bovkun v. Ashcroft, 283 F.3d 166, 170 (3d Cir. 2002) (holding that the Pennsylvania crime for making terroristic threats meets the definition of crime of violence where the *mens rea* is “intent to terrorize another or reckless disregard of causing such terror” or “the intent to cause or reckless disregard of the risk of causing” evacuation of certain facilities or another serious public inconvenience); U.S. v. McCaleb, 908 F.2d 176, 178 (7th Cir. 1990) (citing U.S. v. Hoffman, 806 F.2d 703, 707 (7th Cir. 1986), and holding that threatening to kill the President in violation of 18 U.S.C. § 871 is a crime of violence under former guideline definition that incorporated 18 U.S.C. § 16(a) because it involved making a threat *with the intent* that it be interpreted as a genuine expression of intent to kill the President). Thus, a conviction under D.C. Code § 22-1810 is easily distinguishable from these cases. A conviction under the D.C. statute does not require intent to make a threat, much less the intent to make a threat with the intent to place someone in fear of harm. Therefore, the lack of intent required to violate the D.C. statute is dispositive: a conviction under this statute is *not* a crime of violence under 18 U.S.C. § 16(a).

evidence of a vicious motive or a corrupt mind,” which, when accompanying an act, constitutes moral turpitude); see also Latter-Singh v. Holder, 668 F.3d 1156 (9th Cir. 2012) (determining that the crime of making threats with intent to terrorize is a CIMT); Chanmouny v. Ashcroft, 376 F.3d 810, 815 (8th Cir. 2004) (finding that a violation of the Minnesota terroristic threat statute committed with the purpose to terrorize constitutes moral turpitude). The D.C. statute does not require that a defendant act with recklessness or negligence. The statute only requires that a defendant intend to utter words, not that he intend to utter words in a threatening manner, or that he intend his words to constitute threats. Therefore, a conviction under this statute does not constitute a crime involving moral turpitude.

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Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?	Other
D.C. Code Ann. § 22-402 (Assault with intent to commit mayhem or with dangerous weapon)				
Aggravated Felony: Crime of Violence 237(a)(2)(A)(iii)/ 101(a)(43)(F)	Not more than ten years' imprisonment and \$25,000. <u>See</u> D.C. Code § 22-402; <u>id.</u> § 22-3571.01(9).	Is § 18.2-193 Categorically an Aggravated felony? NO D.C. Code § 22-402 lists two different crimes, namely assault "with intent to commit mayhem" or assault "with a dangerous weapon." Rather than separate <i>means</i> of committing the offense codified in § 22-402, these are separate <i>elements</i> , making the statute divisible and therefore not categorically constitute an aggravated felony. INA § 101(a)(43)(F) defines "aggravated felony" to include "a crime of violence [as defined in 18 U.S.C. § 16] for which the term of imprisonment [is] at least one year." <u>Leocal v. Ashcroft</u> , 543 U.S. 1, 1, 125 S. Ct. 377, 377, 160 L. Ed. 2d 271 (2004). Title 18 U.S.C. § 16(a), defines "crime of violence" as "an offense that has as an element the use ... of physical force against the person or property of another," and § 16(b) defines it as "any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense." <u>Leocal</u> , 543 U.S. at 1. The Supreme Court has concluded that for a conviction to constitute a crime of violence, it must include a "higher degree of intent than	Is this statute categorically constitute a CIMT? NO Because D.C. Code § 22-402 is divisible (see Ag Fel analysis) it is therefore not categorically constitute a CIMT. However, mayhem is a CIMT. "It is clear that an accidental or even a negligent mutilation or disabling would not constitute the offense of mayhem." <u>Matter of Santoro</u> , 11 I&N Dec. 607, 608 (BIA 1966). Here, § 22-402 specifically requires that the injurious act that resulted in "permanent disabling injury" be done "willfully and maliciously." Thus, mayhem constitutes a CIMT "[i]n view of the evil intent required to constitute mayhem and the serious nature of the crime." <u>Id.</u> As for assault with a deadly weapon, the predominant authority is that, while simple assault statutes may not always be CIMTs because they require only general intent or only a minimal touching and no injury, those with aggravating circumstances such as a dangerous weapon are CIMTs. <u>See Matter of Danesh</u> , 19 I&N Dec. 669, 671 (BIA 1988). The Fourth Circuit has found that assault with a dangerous	

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	<p>negligent or merely accidental conduct.” <u>Id.</u> at 9.</p> <p>A state crime categorically constitutes an aggravated felony under the INA if the “minimum conduct that has a realistic probability of being prosecuted” under the statute is also addressed by the corresponding aggravated felony. <u>See Matter of Chairez-Castrejon</u>, 26 I&N Dec. 349, 351 (BIA 2014) (citing <u>Moncrieffe v. Holder</u>, 133 S. Ct. 1678, 1684-85 (2013)).</p> <p>The essential elements of the crime of mayhem are: “(1) that the defendant caused permanent disabling injury to another; (2) that he had the general intent to do the injurious act; and (3) that he did so willfully and maliciously.” <u>Peoples v. United States</u>, 640 A.2d 1047, 1054 (D.C. 1994).</p> <p>Mayhem qualifies as a crime of violence under § 16(a) because its elements require physical force (“permanent disabling injury” caused by an “injurious act”) and a high degree of intent (willfulness and maliciousness). Thus, mayhem under § 22-402 can qualify as a crime of violence under § 16(a).</p> <p>The essential elements of assault with a deadly weapon are: “(1) an attempt, with force or violence, to injure another person, or a menacing threat, which may or may not be accompanied by a specific intent to injure; (2) the apparent present ability to injure the victim; (3) a general intent to commit the act or acts which constitute the assault; and (4) the use of a dangerous weapon in committing the assault.” <u>Frye v. United States</u>, 926 A.2d 1085, 1096 (D.C. 2005).</p> <p>Assault with a deadly weapon can qualify as a crime of</p>	<p>weapon under § 22-402 involved moral turpitude. <u>See Yousefi v. U.S. I.N.S.</u>, 260 F.3d 318, 327 (4th Cir. 2001).</p> <p>Assault with a deadly weapon under § 22-402 includes the elements of simple assault in addition to the use of a dangerous weapon to commit the assault. <u>See Williamson v. United States</u>, 445 A.2d 975, 978 (D.C. 1982). A “dangerous weapon” under this statute is “one that is likely to produce death or serious bodily injury.” <u>Yousefi</u>, 260 F.3d at 326 (citing <u>Powell v. United States</u>, 485 A.2d 596, 601 (D.C. 1984)). The court held that assault with a <i>dangerous</i> weapon was closely analogous to the offense of assault with a <i>deadly</i> weapon, which is a CIMT for immigration purposes. <u>Id.</u> (citing <u>Matter of Medina</u>, 15 I&N Dec. 611, 614 (BIA 1976) (concluding that assault with a deadly weapon under Illinois law involves moral turpitude under any of Illinois law’s three mental states -- intent, knowledge, or recklessness); <u>Matter of Ptasi</u>, 12 I&N Dec. 790, 791 (BIA 1968); <u>Matter of Goodalle</u>, 12 I&N Dec. 106, 107 (BIA 1967); <u>see also Pichardo v. INS</u>, 104 F.3d 756, 760 (5th Cir. 1997) (recognizing that assault with a deadly weapon under Pennsylvania law is well-settled as a crime of moral turpitude)). According to the Fourth Circuit, there is no “appreciable difference between assaulting someone with a deadly weapon as opposed to one that is merely ‘dangerous’ (and therefore likely to produce, at the least, serious bodily injury) such that one crime involves moral</p>
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	violence under § 16(a) because its elements require physical force or a menacing threat accompanied by the use of a dangerous weapon, and requires a “higher degree of intent than negligent or merely accidental conduct” (a general intent to commit the act or acts which constitute the assault). Thus, assault with a deadly weapon under § 22-402 can qualify as a crime of violence under § 16(a)	turpitude and the other does not.” <u>Yousefi</u> , 260 F.3d at 327. Thus, assault with a dangerous weapon under § 22-402 is a CIMT.	
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Possible Charges of Removability	Maximum Sentence	Controlled Substance Offense?	Crime Involving Moral Turpitude?	Other
D.C. Code Ann. § 904.01 (Possession of a Controlled Substance)				
		<p>(d)(1) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter or Chapter 16B of Title 7, and provided in § 48-1201. Except as provided in paragraph (2) of this subsection, any person who violates this subsection is guilty of a misdemeanor and upon conviction may be imprisoned for not more than 180 days, fined not more than \$1,000, or both.</p> <p>(2) Any person who violates this subsection by knowingly or intentionally possessing the abusive drug phencyclidine in liquid form is guilty of a felony and, upon conviction, may be imprisoned for not more than 3 years, fined not more than the amount set forth in § 22-3571.01, or both.</p>		
Controlled Substance Offense: 212(a)(2)(A)(II)/ 237(a)(2)(B)(i)	not more than 30 years or fined not more than the amount set forth in § 22-3571.01, or both	<p>Is § 904.01 Categorically a Controlled Substance Offense? NO</p> <p>The D.C. Code defines controlled substances more broadly than the CSA: it includes substances not on the federal list. D.C. law criminalizes “Difenoxin,” “Propiram,” and “Thiophene,” none of which are included in the federal definition. The two schedules differ; however, two of those substances are federal controlled substances. For example, although “Propiram” is not contained in the CSA, it is in the CSA’s implementing regulations. <i>See</i> 21 C.F.R. § 1308.11(b)(51). Similarly, “Difenoxin” is a federally controlled Schedule I opiate, found in the implementing regulations. <i>See id.</i> at (b)(20). “Thiophene,” however, does not appear in either the CSA or its implementing regulations. The closest substance was a “thiophene analog of phencyclidine.” <i>Id.</i> at (b)(34). Because D.C. law defines controlled substances more broadly than federal law, a</p>	<p>Is § 904.01 Categorically a CIMT? NO</p> <p>Because D.C. Code §904.01 is divisible (see CSO analysis) it is therefore not categorically constitute a CIMT.</p> <p>(b) (5) [REDACTED]</p> <p><i>See Matter of Louissaint</i>, 24 I&N Dec. 754, 761 (BIA 2009) (“[W]hile drug possession or use may not involve moral turpitude, breaking into another’s car or shed in order to avoid detection while illegally using drugs may well be.”)</p>	

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conviction for possession of a controlled substance under D.C. Code § 48-904.01(e)(1) does not categorically “relate to” a controlled substance.

Is § 904.01 divisible? Yes

The model jury instructions for possession of a controlled substance include a blank for the government to specify the substance. 1-VI Criminal Jury Instructions for DC Instruction 6.200. The instructions specify the government must prove beyond a reasonable doubt the defendant “possessed a [measurable] [detectable] amount of a controlled substance.” *Id.* The second element indicates the defendant must have done so “voluntarily and on purpose, not by mistake or accident.” *Id.* Because the jury must specifically find the defendant purposefully and voluntarily possessed a specific controlled substance, the identity of the substance is an element of the crime, rather than an alternate mean of satisfying the controlled substance element. Thus, D.C. Code § 48-904.01(d)(1) is divisible in that it lists several different crimes that carry different penalties and require the government to prove different elements.

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D.C. Code Ann. § 48-904.01 (Distribution of cocaine) (West 2017)				
<p>(a)(1) Except as authorized by this chapter or Chapter 16B of Title 7, it is unlawful for any person knowingly or intentionally to manufacture, distribute, or possess, with intent to manufacture or distribute, a controlled substance.</p> <p>Cocaine is a Schedule II controlled substance in the Controlled Substances Act (CSA). <i>See</i> D.C. Code Ann. § 48-904.02(4); 21 C.F.R. § 1308.12(b)(4).</p>				
Aggravated Felony: illicit trafficking in a controlled substance: 237(a)(2)(A)(iii)/ 101(a)(43)(B) CIMT: 212(a)(2)(A)(i)(I) 237(a)(2)(A)(i)	(2) Any person who violates this subsection with respect to: (A) A controlled substance classified in Schedule I or II that is a narcotic or abusive drug shall be imprisoned for not more than 30 years or fined not more than the amount set forth in § 22-3571.01, or both; (B) Any other controlled substance classified in Schedule I, II, or III, except for a narcotic or abusive drug, is guilty of a crime and upon conviction may be imprisoned for not more than 5 years, fined not more than the amount set forth in § 22-3571.01, or both; except that upon conviction of manufacturing, distributing or possessing with	(b) (5)		

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<p>intent to distribute 1/2 pound or less of marijuana, a person who has not previously been convicted of manufacturing, distributing or possessing with intent to distribute a controlled substance or attempting to manufacture, distribute, or possess with intent to distribute a controlled substance may be imprisoned for not more than 180 days or fined not more than the amount set forth in § 22-3571.01 or both;</p> <p>(C) A substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than 3 years, fined not more than the amount set forth in § 22-3571.01, or both; or</p> <p>(D) A substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than one year, fined not more than the amount</p>	<p>Is § 904.01 divisible? YES</p> <p>The model jury instructions for possession of a controlled substance include a blank for the government to specify the substance. 1-VI Criminal Jury Instructions for DC Instruction 6.200. The instructions specify the government must prove beyond a reasonable doubt the defendant “possessed a [measurable] [detectable] amount of a controlled substance.” <i>Id.</i> The second element indicates the defendant must have done so “voluntarily and on purpose, not by mistake or accident.” <i>Id.</i> Because the jury must specifically find the defendant purposefully and voluntarily possessed a specific controlled substance, the identity of the substance is an element of the crime, rather than an alternate mean of satisfying the controlled substance element. Thus, D.C. Code § 48-904.01(d)(1) is divisible in that it lists several different crimes that carry different penalties and require the government to prove different elements.</p>		
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set forth in § 22-3571.01, or both.			
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